



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/261,221 03/03/99 HAIR

J PMS-241416

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MM91/0913

EXAMINER

LESTER, E

ART UNIT

PAPER NUMBER

2873

DATE MAILED:

09/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/261,221

Applicant(s)

HAIR ET AL.

Examiner

Evelyn A. Lester

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33,38,39,58-67 and 75-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-33,39,62-67 and 75-78 is/are allowed.
- 6) ☒ Claim(s) 1-6,22,23,38,58 and 60 is/are rejected.
- 7) ☒ Claim(s) 7-21,59,61,79 and 80 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) ✓ / /
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6,14-16.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on 12-8-00 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/261,221 is acceptable and a CPA has been established. An action on the CPA follows.

Information Disclosure Statement

2. The Information Disclosure Statements (IDS) filed on 12-8-00, 8-13-01, 8-23-01 and 9-7-01 have all been considered. However, please note that the references on the IDS's filed on 8-23-01 and 9-7-01 have been crossed out as being duplicate citations of the listed references from the PTO-892 (paper #4, mailed on 8-28-00).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-6, 22, 23, 38, 58 and 60 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

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reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the instant case, there is no written description which discloses the claimed invention without a collector. Though the courts acknowledge that while a claim may be broader than any specific embodiment disclosed in the specification, the claims may be no broader than the supporting disclosure. The Applicants have chosen to omit the collector element which was originally recited in the originally filed claims. However, the specification and drawings do not support the claimed invention without the collector element, in that the collector element is considered essential in achieving an improved detection of a vended article. It is not understood how the objectives of the invention could be attained without the collector element.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 38 and 58 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moulding, Jr. et al (U.S. patent 4,869,392).

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Moulding, Jr. et al discloses the claimed invention of an optical vend-sensing system as especially noted at Figure 4, with its accompanying text; as well as column 5, lines 33-44, column 6, lines 29-32, column 6, line 61 to column 7, line 1, and column 7, lines 36-52. The vend space of Moulding, Jr. is interpreted as being the exit chute or passageway having a defined lateral width and a defined front-to-rear depth (42,44,46), wherein an article falls past an optical vend-sensing unit, having at least an emitter and a detector(50,52,54), into a customer accessible hopper (40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moulding, Jr. et al (U.S. patent 4,869,392).

Moulding, Jr. discloses the claimed invention of an optical vend sensing system, except for explicitly teaching a laser used as the light source. It would have been obvious to one of ordinary skill in the art to utilize a laser as the light source in Moulding, Jr. et al's invention due to the directional qualities offered by the laser, as well as the availability and size of a laser component.

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Allowable Subject Matter

6. Claims 79, 7-21, 80, 59 and 61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 24-33, 39, 62-67 and 75-78 are allowed.
8. The prior art does not show or fairly suggest the claimed subject matter and/or invention of an optical vend-sensing system, or an optical sensor, having the claimed structure and claimed limitations, wherein a rejection under 35 USC 102 or 103 would be improper. Please particularly note the combination of claimed elements and claimed limitations, including the collector elements in the optical vend-sensing system, and the specific reflective elements of the optical sensors (noted in claims 24 and 62).

Response to Applicants' Response

9. It is noted that the originally filed elected claims were previously indicated as being in condition for allowance. The Applicants voluntarily filed a request for CPA. Claims 1-6, 22, 23, 38, 58, 60 are now under new ground(s) of rejection this office action.

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to E.A. Lester whose telephone number is (703) 308-4943. The examiner can normally be reached on Monday-Friday (except for first Fridays of a biweek) from about 8:30 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps, can be reached on (703) 308-4883. The fax number for Technology Center 2800 is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Evelyn A. Lester
Patent Examiner
AU 2873
September 10, 2001